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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-first session

SUMMARY RECORD OF THE 1541st MEETING

Held at the Palais des Nations, Geneva,
on Friday, 16 August 2002, at 10 a.m.

Chairman: Mr. DIACONU

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Fourteenth to seventeenth periodic reports of Hungary (continued) (CERD/C/431/Add.1)

1. At the invitation of the Chairman, the members of the delegation of Hungary resumed their places at the Committee table.

2. Mr. PRANDLER (Hungary), replying to Committee members' questions, said that during the previous decade Hungary had taken major steps to improve the situation of both its national and its ethnic minorities particularly in the promotion of the rule of law and compliance with its obligations under international law. However, rapid social and economic changes had caused the living conditions and economic opportunities of ethnic minorities to worsen. Whereas the scope of constitutional and human rights provisions was broadening, certain aspects of racial prejudice had surfaced, which the Government recognized had to be combated.

3. The Hungarian Parliament had introduced legislation relating to Hungarians living abroad, of whom there were approximately 4 million. It was the Government's belief that genuine assistance should be provided to them in the context of European integration, and that their rights could be best protected through cooperation with neighbouring Governments. To that end, intensive negotiations were in progress with the Governments of those neighbouring countries that still had reservations about the implications of the legislation. The hope was that consensus would be reached imminently which could lead to changes to existing bilateral agreements, the adoption of new ones or revisions to the relevant legislation.

4. Regarding apartheid, he agreed that racial discrimination was a broader concept than apartheid. In the past there had been manifestations of anti-Semitism and the Government and the judiciary were stepping up their efforts to deal with such behaviour within the constitutional framework. Supporters of one of the political parties that had run for the recent elections had expressed such views, but the party had not managed to win any seats in Parliament. There were no significant signs of anti-Islamic feeling. The intention behind the Day of Remembrance, which was celebrated in Hungarian schools, was to honour all victims of intolerance, including Roma victims of the Holocaust in Hungary. Second World War military cemeteries and monuments to the fallen were properly maintained in accordance with the Geneva Conventions and bilateral agreements with other countries. In conclusion, he assured the Committee that, at the Committee's request, future periodic reports would be more analytical in their approach.

5. Ms. MOHACSI explained that the protection of the rights of women in general was a relatively recent development in Hungary and, consequently, women in minority groups still experienced serious discrimination. Discrimination against Roma women was worst in the workplace and the labour market, and the unemployment rate among them was close to 100 per cent.

6. The Roma also faced racial discrimination in public places such as bars and restaurants. However, members of the delegation were personally involved in preparing legislation and drawing up a range of sanctions to combat all forms of racial discrimination against Roma.

7. Discrimination in the housing market was a particularly serious problem since the Constitutional Court had decided that housing fell outside its area of competence. Moreover, lawyers were allowed, by law, to decide whether or not persons should be evicted from their homes or places where they were legally or illegally residing, without reference to the courts. The issue had not hitherto been a priority one, but since it had been raised specifically by the Committee, action would be taken.

8. The Ministry of Education was aware that the most effective way of creating equal opportunities in education was through the integration of young Roma throughout the school system. Segregation of young Roma, as well as of other poorer sections of the community, was becoming more widespread and less than 10 per cent of Roma youth achieved even the most basic examination qualification. In order to encourage integration, the Government planned to improve access to kindergartens, employ Roma teachers, supervise the transfer to primary and secondary schools, support the teaching of Roma culture in schools and classes, and launch preparatory, scholarship and trainee programmes for talented young Roma. The key tasks of the Commissioner in charge of Roma issues were to represent an anti-discriminatory view when changes were being made in the education laws, and to ensure that government subsidies to assist Roma children went on quality programmes and were performance-related. There were plans to improve educational facilities in the regions and small communities, which were lagging behind, by setting up more kindergartens for underprivileged children, including Roma children. Special importance was attached to the training of future teachers and improvement of teaching methods, and to the inclusion in the curriculum of Roma folklore and other material aimed at reducing prejudice. Programme development would also include pre-screening in kindergartens and strategies to help children in special schools, and the dissemination of successful development programmes already implemented in public education. With assistance from the European Commission's Phare programme, a new concept, "the school of the twenty-first century" was on the point of being launched to modernize the educational infrastructure in underprivileged communities.

9. To implement the programme designed to provide equal opportunities for Roma and other underprivileged children, the Ministry of Education planned to establish a network of local integration offices, as well as a new body charged with devising support criteria, assuring the quality of integration programmes and elaborating and implementing medium-term and long-term strategies to improve the situation of underprivileged young people.

10. Mr. HEIZER (Hungary) said that, in Hungary, 13 national and ethnic minorities were recognized by law. Members of national minorities had no difficulty in obtaining jobs at any level of local and central government, as evidenced by their significant representation in the present Government. Under the legislation on minorities, a system of minority self-government had been established in 1992 and its impact on the election process could now be estimated. As a result, certain amendments were being prepared to improve the representation of minorities

in the electoral process. Within the minority self-government system, there were more than 5,000 elected local minority leaders, of whom more than 3,000 were Roma, working at the heart of their communities. The election system had its flaws, the so-called "ethno-business" and the level of competence in the minority self-governments, but those issues were being addressed.

11. The report of the Republic of Hungary on compliance with the obligations of the European Charter for Regional or Minority Languages would shortly be forwarded to the Government for adoption. It would then be sent to the Council of Europe.

12. His delegation had provided Committee members with a package of documents containing detailed information on the financing of minority programmes, including those aimed specifically at Roma. Assistance from the Phare programme, in particular, had been instrumental in the launching of a social integration programme for Roma.

13. Members of the Committee were welcome to participate in a follow-up meeting in Hungary in 2003, so that they could see for themselves the developments that were taking place.

14. Mr. TELEKI (Hungary) said that three key factors had facilitated the integration of the Roma people into Hungarian society during the previous 12 years: the work of the civil sector, improved governmental structures and bilateral cooperation. During that period, Roma civic organizations and non-governmental organizations (NGOs) and the Roma self-government had shown that the Roma people could actively contribute to improving their situation if they were given the opportunity to participate in decisions concerning them. The Government appreciated the interest shown in minority issues by international organizations and stood ready to continue its dialogue with them with a view to improving the situation further.

15. Following the change of political regime in 1990 the number of Roma people in employment had decreased dramatically and various types of discrimination had emerged. The undereducated had been the hardest hit, as employers increasingly demanded highly-qualified specialists. In addition, Roma living in the countryside were no longer able to find employment in the bigger cities because the dormitories formerly provided for workers by State companies had ceased to exist and they could not afford housing. They were subjected to both direct and indirect discrimination, which the anti-discrimination legislation under consideration would seek to eliminate. Officials of Roma origin recently appointed to various ministries would work to combat discrimination within the scope of each ministry's authority.

16. Persons declaring themselves to be Roma had not been represented in Parliament under the one-party system of the socialist era. Since the change of regime Roma people had begun to stand for office, and as a result of the 2002 elections four members of Parliament, including himself, were of Roma origin.

17. The Roma population living in Hungary commemorated annually the execution of several thousand Hungarian Roma in the Auschwitz and Birkenau camps on the night of 2 August 1944. According to a law introduced by the Ministry of Education in 2000, all victims of the Holocaust were remembered on 16 April each year.

18. Mr. LAKATOS (Hungary), referring to refugee policy in Hungary, said that, according to a recent social survey on tolerance towards migrants, negative views had decreased slightly during the period 1995-2002. Hungary had been the first country from the region to accede to the Geneva Convention and Protocol relating to the Status of Refugees, and it had enjoyed fruitful cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR) since the opening of the Budapest office in 1989. The new Asylum Act, drafted with UNHCR assistance, was already fully consistent with European Union legislation and the relevant international standards. Since the Act's entry into force in March 1998 Hungary had lifted the geographical limitations to the Geneva Conventions and was now facing an unprecedented increase in the number of asylum applications. Nevertheless, processing time for applications had been reduced from two and a half years to one year and the maximum period for the holding of illegal immigrants in border guard shelters had been reduced from 18 to 12 months. In January 2000 a new central body had been established, the Office of Immigration and Citizenship of the Ministry of the Interior, which was responsible for assuring civilian control over the activities of the border guards and the police. The staff of reception centres and community shelters were civilians and were prohibited from using physical force: in case of serious disturbance the police must be called in. The Office was aware of the intolerable situation in the centres and shelters and had made progress towards improving conditions. According to a recent survey by the head of the UNHCR office in Budapest, conditions had been brought up to international standard in the previous six months. On 21 November 2001 Hungary had acceded to the 1954 Convention relating to the Status of Stateless Persons, and the amendment to the Hungarian citizenship law which had come into effect on 1 July 2001 contained provisions designed to help stateless persons obtain citizenship.

19. Ms. WELLER (Hungary) said that the Constitutional Court had been established in 1989 and had begun work on 1 January 1990. It comprised 11 members who were elected by a two-thirds majority of members of Parliament. Issues concerning the constitutionality of acts of Parliament were decided in plenary sessions, while the constitutionality of government decrees or statutes of a lower level were generally decided by chambers consisting of three judges. Decisions were by majority, although the minority viewpoint was published.

20. The Constitutional Court had broad competence and received more than 1,000 motions per year. Its functions included: constitutional review of statutes; preventive review of the constitutionality of statutes (presidential veto); review of statutes for conformity with international treaties; determination of an unconstitutional omission to legislate by a legislative organ, and judgement of constitutional complaints by individuals. Compliance of statutes with international treaties was most often examined in the framework of constitutional review. The Constitutional Court held that compliance with international treaties ratified by Hungary was a precondition for the constitutionality of any legislative or judicial act. In the hierarchy of legal sources international treaties ranked above statutes but below the Constitution. Since 1990 more than 750 decisions on the merits and more than 2,000 other decisions had been published in the Official Journal.

21. The anti-discrimination legislation currently being formulated was an important goal of the new Government. She stressed, however, that general provisions banning discrimination already existed in Hungarian law, although there was no single act covering all institutional and

procedural aspects of combating discrimination. The current sector-specific legislation was in line with Hungarian legal tradition and presented both advantages and disadvantages. On the one hand, all basic provisions governing a particular area of life were contained in a single legal document that was easily understood and accessible to non-lawyers expected to implement its provisions. On the other, the system lacked transparency for those to whom the law was applied and had a negative impact on the system of sanctions.

22. The Interdepartmental Codification Committee established in March 2001 had looked into the need to adopt a comprehensive anti-discrimination act. Its primary task had been to ensure that each ministry reviewed legislation concerning its specific field to ensure that it was free of discriminatory regulations, and four independent experts had also been involved. The review process had identified two possible legal solutions: the "horizontal regulation" system, involving a general anti-discrimination act, and the existing sector-specific regulations. The common understanding had been that, whichever system was used, law enforcement and the sanction system should be strengthened and consistently implemented.

23. As a first step towards strengthening the implementation of the existing anti-discrimination provisions, in October 2001 the Ministry of Justice, in cooperation with the National Gypsy Self-Government and the Office of National and Ethnic Minorities, had established a Client Service Network for Anti-Discrimination. The objective of the Network was to provide a legal aid service with explicit competence in cases of discrimination based on an individual's Gypsy origin. The Network had received 520 cases between October 2001 and March 2002. Most of the complaints from Roma had concerned family law and labour law.

24. The drafting process of the new legislation was closely connected with the preparation of the ratification of Protocol No. 12 to the European Convention on Human Rights and with the harmonization of Hungarian law with the European Union's anti-discrimination directives. It included consideration of the following issues: whether to adopt a single act for all types of discrimination or separate acts governing different types of discrimination; the most appropriate sanctions and most appropriate organ to apply them; whether the functions of the anti-discrimination body envisaged by the European Union directives were covered by existing institutions or whether new bodies should be established, and if so, their structure and relationship to existing institutions; and whether existing or proposed institutions met the requirements of an effective domestic remedy for the purposes of international complaint mechanisms. Despite the wide range of issues to be considered, the outline of the draft anti-discrimination act should be completed by the end of 2002 and the text of the law by mid-2003.

25. The main power of the Parliamentary Commissioners for Civil Rights and for National and Ethnic Minority Rights (ombudsmen) was to issue recommendations to public authorities following mediation procedures. Their competence did not extend to the activities of the Constitutional Court, the Parliament and the ordinary courts, but they were free to investigate complaints against a wide range of public authorities. For example, they were entitled to examine allegations of police abuse and were obliged to institute criminal proceedings if they found that a crime might have been committed. Consideration would be given to extending their powers in the framework of the new anti-discrimination legislation.

26. The new draft amendment to the Criminal Code provided that the use of "hate speech" was an offence punishable with up to three years' imprisonment and incorporated into the Code the definition of the term "racial discrimination" as provided in the Convention. The conflict between the two Constitutional Court decisions of 1992 and 1999 concerning incitement to hatred had arisen because an amendment to the Criminal Code had been made in 1992, with the addition of a phrase stating that other acts capable of inciting hatred would also be punished. That amendment had been found to be unconstitutional in 1999 on the grounds of being too vague and likely to violate the principle of legal certainty.

27. In reply to a question about the rights of foreigners in the criminal procedure, she said that the Code of Criminal Procedure provided that the costs incurred on account of the defendant not speaking Hungarian would be borne by the State. Therefore, the costs of interpretation at consultations between the counsel and the client would be reimbursed by the State, although at present not until the final decision was made. It was hoped that that problem would be resolved by the projected new system of legal aid. Although the legislation in force contained provisions on legal aid for both criminal and civil cases, those provisions were deemed to be insufficient and therefore a new draft law on legal aid and assistance to persons with insufficient means was being prepared, under which legal aid would cover pre-trial counselling and representation before the courts and other authorities. Legal assistance would also be available in criminal proceedings not only for the defendant but also for the victim of the crime and the witnesses. Foreigners would be eligible for legal aid in criminal matters; their eligibility for aid in civil proceedings was under consideration.

28. Hungarian prisons were heavily overcrowded. In February 2002, over 17,000 persons were being detained in a penitentiary system with a normal capacity of 10,000 persons. In order to address the problem, the Government had adopted a six-year programme to develop Hungary's penitentiary institutions, with the building of new prisons and the reconstruction and modernization of existing ones. The Government acknowledged that other measures were also needed; the draft amendment to the Criminal Code that would be submitted to Parliament in September 2002 would repeal the provisions introduced in 1998 forcing judges to impose longer sentences and would limit their discretionary power in sentencing. Steps would be taken to strengthen the network of probation officers to allow for a more frequent use of probation and the deferment of indictment as alternatives to imprisonment. The new Criminal Code (to be adopted by 2006) would introduce further alternative punishments to reduce the number of prison sentences imposed.

29. The lack of individual complaints brought before the Committee under article 14 of the Convention was not due to a lack of awareness of the mechanism, as the Hungarian Helsinki Committee had endeavoured to disseminate information about it. However, the mechanisms available under the European Convention on Human Rights had been used frequently, perhaps because they allowed for the possibility of compensation for applicants.

30. Anti-discrimination education formed part of the general human rights education provided in schools from seventh grade onwards. Law students were given lectures on both constitutional law and international human rights law. Police officers and some teachers were being provided with training about the Convention, as well as Romany language courses.

An anti-discrimination training project was being developed in the framework of the Roma Integration Programme and an anti-discrimination media campaign was to be launched in the near future.

31. Mr. ABOUL-NASR said the delegation should clarify what had been meant when it had said that Hungary was applying "European norms", given that Hungary had obligations to apply international norms. Much of the discussion had focused on the situation of the Roma population in Hungary, which had been very informative; however, the State party should accord equal attention to other minority groups in its next periodic report. Which were the 13 minority groups recognized by law in Hungary; and what was their background? It would be interesting to learn whether there were any minority groups that were not recognized by law. Further details about immigration and asylum-seekers might usefully be provided in the next periodic report.

32. Mr. THORNBERRY said that Act LXXVII of 1993 on the Rights of National and Ethnic Minorities had been inspirational to many experts working in that field. However, some groups - especially the Roma - seemed to have been neglected in the general concern for minority rights, where a straightforward "non-discrimination" approach might have been more beneficial to some groups. The Law did not pay sufficient attention to the diversity of needs among different minority groups. It was important to validate, sustain and be proud of the diversity of cultures in Hungary. Cultural self-confidence would greatly encourage minorities and enable them to become more self-determining.

33. Roma unemployment was extremely high, partly because of the effects of globalization and privatization on certain minorities. He would like to know whether there was any prospect of reorientation in the new administration's philosophy that would assist in reducing such disparities. The Government should seriously consider introducing an expansive programme of vocational education for the Roma population.

34. Referring to Hungary's ratification of a number of bilateral agreements with neighbouring and other countries, which afforded a significant amount of minority protection, he asked whether those arrangements had contributed to a better climate for inter-ethnic relations in Hungary and whether they were a useful supplement to multilateral agreements such as the Convention.

35. Mr. SHAHI, welcoming the comprehensive information provided, expressed satisfaction that the delegation comprised members of the Roma population and other minorities and that Roma affairs seemed to lie at the heart of government policies. However, the State party should clarify its position regarding the hierarchy of sources of law in the domestic legal order of Hungary, as all States parties should recognize the supremacy of international law over the Constitution and domestic legislation.

36. Much reference had been made to the European instruments on racial discrimination and to Hungary's comprehensive efforts to eliminate racial discrimination. However, he drew the State party's attention to the Committee's General Recommendation XXVII on discrimination against Roma and urged it to adopt the measures recommended therein.

37. Mr. HERNDL said that the implementation of article 4 of the Convention in its entirety warranted further attention in the next periodic report, as the question of the prohibition of existing organizations which promoted and incited racial hatred had not been addressed. Although it was important to focus on the question of implementation of the Convention, he did not think it unreasonable for States parties to refer to regional human rights instruments, given that the issue of racial discrimination was covered by such a complex system of laws.

38. Mr. de GOUTTES said he would be interested to learn whether the Committee's General Recommendation XXVII had had any influence on recent Hungarian policy-making on Roma issues.

39. Mr. AMIR said that the State party should provide more information about any policies introduced to promote anti-discrimination attitudes in the media or in schools. He would also welcome information about how individuals or groups could file complaints about racial discrimination. On what criteria were such complaints deemed to be acceptable or not? Further details should be provided in the next report about the treatment of complaints of racial discrimination in the Hungarian criminal and civil legal system.

40. Mr. PILLAI said that the reporting State should indicate the extent to which the Committee's General Recommendation XXVII had influenced the State party in its efforts to raise public awareness of the situation of the Roma and to sensitize officials with regard to their conduct towards the Roma and other minorities, and in preparing its reports.

41. Ms. JANUARY-BARDILL said that she had some misgivings as to whether the delegation's view on apartheid conformed to the Committee's concept of apartheid, as reflected in its General Recommendation XIX on article 3. Apartheid had a more specific meaning.

42. Mr. LINDGREN, welcoming the composition of the delegation, commended its thorough, clear responses and open-minded attitude. The report itself had been similarly frank in citing cases of discrimination.

43. He would like further clarification about Hungary's reluctance to make the declaration under article 14. In addition, he would like to know whether the unemployment of Roma women arose, in the view of the Government, from discrimination or from their traditional lifestyle.

44. The CHAIRMAN, speaking as a member of the Committee, said that the situation of minorities in Hungary had clearly improved. A comparison of 1991 and 2001 data revealed far greater numbers of Roma, Slovaks and Germans. That could not be attributable to the birth rate alone, and must indicate that larger numbers were willing to identify themselves as belonging to those ethnic groups.

45. The principles of the Status Law, as described by the delegation, seemed just and correct. The agreements on that matter between Hungary and neighbouring countries might, in fact, call for some improvements. It was paramount that that process should result in a non-discriminatory situation for all persons, irrespective of their ethnic origins.

46. He was impressed, furthermore, by the Government's reflections on whether to enact a general anti-discrimination law or sector-specific legislation; it was clear that the alternatives were being given serious consideration. The Government's resolve to abide by European standards did not, in his view, constitute a problem, since for the most part the European standards went beyond the international standards.

47. Speaking as Chairman, he said that the Committee was grateful for the invitation to visit Hungary, and requested the Government to send a formal invitation, explaining in what way such a visit would be of assistance to the work of the Committee.

48. Mr. PRANDLER (Hungary), thanking the Committee for its welcome, assured it that his Government would study all the remaining questions and reply in writing.

49. Mr. SICILIANOS (Country Rapporteur) said that Hungary's presentation had indeed been impressive. The delegation's attitude had been frank, open and constructive. The Committee and the delegation had agreed that a number of changes needed to be made.

50. Several institutions needed strengthening, including the Parliamentary Commissioners, particularly the Commissioner for National and Minority Ethnic Rights, and the newly created Committee on Anti-discrimination. The Government had indicated that the Parliamentary Commissioners - or ombudsmen - and the Prime Minister's Roma office might be accorded broader competencies, including the power to seize the courts. He commended Hungary for the establishment of a Client Service Network for Anti-Discrimination, which he understood was responsible for dispensing legal aid. There had been fruitful discussion about changes in the administration of a number of the offices of the commissioners attached to ministries. The Government had declared its intention to increase the political representation of Roma at the local and national levels. While international treaties should take precedence over domestic laws, he observed that the power of the Constitutional Court to oversee the compatibility of domestic laws and treaties with the Constitution was commonly found in other legal systems.

51. The Hungarian Government should take account, in its formulation of an anti-discrimination law, of the United Nations Model Law against Racial Discrimination, as it no doubt would of the relevant European Union Directive. With respect to the Roma, it should consult the Committee's General Recommendation XXVII. The implementation of article 4 was mandatory; in that regard the Government should consult the Committee's General Recommendations VII and XV, and should ensure that all aspects of the article were incorporated into law. Hungarian legislation understandably protected the rights of persons of Hungarian origin residing in neighbouring countries, but warranted amendment to take account of the recommendations of the Venice Commission. Legislation on the parliamentary representation of national minorities would constitute an important achievement.

52. In addition, the Government should consider the situation of minorities other than the Roma, even though such minorities were integrated into Hungarian society and retained their cultural identity. Their political representation was a case in point. The remarks of the delegation with respect to the Government's educational policy for the Roma, and the problem of

school segregation, had been illuminating. The priority given by the Government to Roma children's attendance in kindergarten to prevent subsequent failure in school, and to teacher training, was commendable. The placement of such children in schools for mentally impaired students was of course most disturbing.

53. Laws prohibiting discrimination in employment should be more rigorously applied, with special attention to the double discrimination suffered by women. With respect to discrimination in housing, the Committee was pleased that the Government intended to review the powers of the notary public in evictions.

54. Training should be provided for police and prison personnel, to modify their attitudes towards Roma as well as toward foreigners and refugees. Although it was difficult to change social attitudes, work should be done to raise public awareness about the Roma, with a view to ending their exclusion from bars and restaurants. The Committee noted the rehabilitation of community shelters to bring them up to European standards, and the increased staff of the Office of the National and Ethnic Minorities.

55. The CHAIRMAN thanked the delegation for the frank, constructive and open discussion.

56. The delegation of Hungary withdrew.

ORGANIZATIONAL AND OTHER MATTERS (continued)

57. The CHAIRMAN drew the Committee's attention to a letter he had drafted, with suggestions from Committee members, in reply to the letter dated 11 August 2002 from the Ambassador of Fiji, which he had circulated, and requested the Committee's comments.

58. After drafting suggestions by Mr. HERNDL, Mr. BOSSUYT and Mr. ABOUL-NASR, the CHAIRMAN said that he would revise the letter and dispatch it.

59. It was so agreed.

The meeting rose at 12.50 p.m.